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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

GERALD GUDENAU and	)	CIVIL NO. 07-00104 DAE BMK
DANA GUDENAU,	)	
	)	FINDINGS AND RECOMMENDATION TO
Petitioners,	)	DENY PETITIONS TO QUASH
	)	INTERNAL REVENUE SERVICE THIRD
vs.	)	PARTY SUMMONS
	)	
UNITED STATES OF AMERICA and	)	
INTERNAL REVENUE SERVICE,	)	
	)	
Respondents.	)	
_____	)	

FINDINGS AND RECOMMENDATION TO DENY  
PETITIONS TO QUASH INTERNAL REVENUE  
SERVICE THIRD PARTY SUMMONS

This matter came for hearing on Petitioners' Motion to Quash Summons on May 4, 2007. Petitioners seek to quash a summons issued by the Internal Revenue Service (IRS) to a third party holding information about petitioners relevant to an IRS investigation of petitioners' tax liability. Thomas A. Helper appeared for the respondents. No one appeared for petitioners.

Having reviewed the Petition and the Memorandum in Opposition and related documents, for the following reasons, the Court hereby recommends DENIAL of the Petition to Quash.

First, petitioners have failed to prosecute this matter. As noted above, neither Petitioner appeared for the hearing, nor did they contact the court or Respondents' counsel to explain the failure to appear. Accordingly, the petition is denied for lack of prosecution.

Second, the arguments made by petitioners here were considered and rejected by this court in connection with two other cases filed by these same petitioners within the last few months. The first was Gudenau v. United States, Civ. No. 05-00733 SPK-LEK. Magistrate Kobayashi issued detailed Findings and Recommendation to Deny Petitions to Quash Internal Revenue Service Third Party Summons on August 22, 2006 (hereinafter "August 22, 2006 Order"). Judge King adopted the Findings and Recommendation in an order dated September 11, 2006. The second was Gudenau v. United States, Civ. No. 06-00625 KSC ACK. Magistrate Judge Chang recommended denial of the petition on February 22, 2007,<sup>1</sup> and Judge Kay adopted the recommendation on March 28, 2007. For the reasons stated in the August 22, 2006 Order, the court recommends denial of the instant Petition.

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<sup>1</sup> As Judge Chang noted in his Recommendation, Petitioners failed to appear at the hearing on their motion before him.

Third, the court finds that respondents, through the Declaration of Internal Revenue Service Special Agent Dan Nikaido, have set forth a prima facie showing of good faith in the issuance of the summons in question. See Lidas, Inc. v. United States, 238 F.3d 1076, 1081-82 (9th Cir. 2001 )(citing United States v. Powell, 379 U.S. 48 (1964)). Plaintiffs have failed to carry the "heavy burden" of presenting detailed evidence, not conclusory allegations, of why a summons is defective. See Crystal v. United States, 172 F.3d 1141, 1144 (9th Cir. 1999).

For the foregoing reasons, the court recommends DENIAL of the Petition to Quash.



/s/ Barry M. Kurren  
United States Magistrate Judge  
Dated: May 10, 2007

GERALD GUDENAU, ET AL. V. UNITED STATES OF AMERICA, ET AL.; CV. NO. 07-00104  
DAE-BMK; FINDINGS AND RECOMMENDATION TO DENY PETITIONS TO QUASH INTERNAL  
REVENUE SERVICE THIRD PARTY SUMMONS